IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

JUDGES ORDER NO.356 OF 2006
WITH
SUIT NO.1390 OF 2003

N.P.Achuthan & Ors. ..Plaintiffs
Vs.
U.P.Co-Op.Spinning Mills Federation Ltd.& Anr...Defendants
And
Registrar, Handloom and Textile
Co-operative Societies, Uttar Pradesh ...Applicant

AND
JUDGES ORDER NO.357 OF 2006
WITH
SUIT NO.648 OF 2003

Asian Paints Factory Employee Provident Fund ...Plaintiffs
Vs.
U.P.Co-operative Spinning Mills
Federation Ltd. & Anr. ...Defendts
And
Registrar, Handloom and Textile
Co-operative Societies, Uttar Pradesh. ...Applicant

AND
JUDGES NO.368 OF 2006
WITH
SUIT NO.2792 OF 2000

Dr.Vijay Satbir Singh & Ors. ...Plaintiffs
Vs.
U.P. Co-operative Spinning Mills
Federation Ltd. & Anr. ...Defendants
And
Registrar, Handloom and Textile
Co-operative Societies, Uttar Pradesh ...Applicant

Mr.Janak Dwarkadas with Mr. Zal Andhyarujina with N.R. Modi with Deepali Thakor i/b. Rustamji Ginwala for Plaintiff in Suit No.2792 of 2000(JONo.368 of 2006) & Chamber Summons No.80 of 2007

Mr. Nooruddin Dhilla i/b. Hariani & Co. for Plaintiffs in Suit No.1390 of 2003(JO No.357 of 2006)
Mr.Utkarsh Tewari instructed by Shantilal & Co. for the Defendant No.1.
Mr.Rakesh Upadhayay a/w.Gajendra Machha for the Applicant
Harihar Bhave instructed by Bhave & Co. for State Bank of India
Mr.Amit Vyas with Mr. Marvyen Fernandes i/b. Rajani Associate for Plaintiff in JO 356 of 2006
Mr.S.N.Vimadalal for M/s.S.R.Tattles
Mr. D.V. Deokar 1st Assistant
The Court Receiver present

CORAM: SMT. ROSHAN DALVI, J.
DATED: 19TH JANUARY, 2007

P.C.

1. The Applicant is the Registrar, Handloom and Textile Co-Operative Societies, Uttar Pradesh who has been appointed Liquidator of the Defendant No.1 Co-operative Society under

the U.P. Co-operative Societies Act, 1965 (The Act) under the previous Judges Order passed by my brother Judge Dharmadhikari on 27th June, 2006. The Applicant was given leave to initiate and complete the winding up proceedings of Defendant No.1 Society. The winding up proceedings have been initiated under Section 72 of U.P. Co-operative Societies Act, 1965. The Applicant has been appointed Liquidator under Section 73 of the said Act. Pursuant to such appointment the Applicant is required to take in his custody and control the properties, effects and actionable claims to which the Society is entitled and take steps to prevent loss and deterioration of those properties, effects and claims. He is required to keep final accounts of such properties, effects and claims and be responsible for their safe custody.

2. The claims of the Plaintiffs in these Suits are upon certain bonds of the U.P. Government which became payable on different dates together with interest thereon payable quarterly. The Bonds have been issued t the employees of the first Defendant Society in Suit No.2792 of 2000. The bonds matured after the filing of the Suit. The suit was initially filed for recovery of the quarterly interest amounts which were payable and not paid. After the filing of the suit the bonds matured and hence, amendments to the plaint

came to be allowed. The liabilities of the first Respondent Society is therefore for liquidated amounts of the principal and interest payable on the bonds.

3. The Applicant as the Liquidator shall have to realise the assets of the Society by sale of its movable and immovable properties for repayment to the Plaintiffs in these suits, who have actionable claims against the Society, as also several other creditors. I am told that there are about 98 such creditors. These are secured as well as unsecured creditors. The creditors would be required to prove their debts and claims before the applicant as the Liquidator under Section 74 (c) of the said Act. Upon realisation of the proceedings of the sale of the properties the applicant as a Liquidator would be required to distribute the assets of the Society as per the provisions of Section 74(g) of the Act.

4. At the time the Applicant applied for leave to initiate and complete the winding up of the first Defendant Society, the Applicant made a statement before the Court, which has been recorded in paragraph No.7 of the Order of my brother Judge Dharmadhikari dated 27th June, 2006, that to show his bonafides he is ready to deposit Rs.6.34 Crores which represented the principal amounts payable to the Plaintiffs in the above three suits then.

5. In one of these suits being Suit No.2792 of 2000 the claim has been increased consequent upon the bonds having matured after the filing of the Suit. That claim of the Plaintiffs is towards the principal amount payable on the bonds as also for the loss and damages suffered by them. The execution of the bonds has not been disputed by the first Defendant Society. It, therefore, does not behove the applicant not to take as accepted, the actionable claim of the Plaintiffs with regard to principal amount of the Bonds which matured after the filing of the suit and for which inter alia amendments to the plaint have been allowed. The entire claim against the first defendant Society, which relates back to the filing of the suit and would be adjudicated upon as a whole, includes the liquidated amounts of the principal as well as the interest under the bonds to the employees of the first defendant Society.

6. It has been argued on behalf of the Plaintiffs that they have no faith and trust in the applicant as Liquidator and that he is in fact, the alter ego of the Defendants. In view of such assertion of lack of trust, showing bonafides by the applicant at least to the extent of the principal amount of the bonds claimed in the Suit by way of amendment becomes even more required and essential. Surprisingly the Advocate

on behalf of the Applicant states that his bonafides extend to the extent of the statement made and the bonafides shown in the earlier application and could go no further. If the interest amount payable on the bonds is accepted, there is no reason or cause shown to deny the principal amount on the bonds itself. The bonafides are therefore not as patent and explicit. Though it is seen that under the statutory provisions the liquidator appointed must take control of the properties, effects and actionable claims of the society, the applicant as the Liquidator is equally responsible for the safe custody of those properties and effects and claims. The applicant desires to sell several immovable properties of the Society. The sale proceedings must, therefore, come into his safe custody; he is responsible for them under Section 73(2) of the Act. His acts must therefore be transparent and pellucid.

7. The claim of the Plaintiffs in these Suits towards the principal amount of the Bonds deserves to be under the control of the Court so far as to see that the sale proceeds are realised by the Applicant for distribution amongst all the creditors after the principal amount of the Bonds claimed in the Suit by way of amendment is shown to be procured on sale.

8. The Applicant is therefore, given leave by the Judges Order sought by the applicant to take into his custody all properties in the possession of the Court Receiver, High Court, Bombay appointed in the above three suits and to exercise all the powers under Section 74 of the Act including the power to realise the assets of the first defendant Society by sale of the property subject to the applicant depositing to the credit of this suit the sale proceeds to the extent of the principal amount of the Bonds in all the Suits. It is clarified that the deposit is directed to be made only to see the performance of the Statutory duties by the Applicant in the face of lack of trust by the Plaintiffs. After the deposit of the aforesaid amounts from the proceeds of the sale as made by the applicant as the liquidator, the applicant shall be entitled to proceed as per the statutory requirements of the Act and without giving any preference to the Plaintiffs.

9. It is also clarified that the Court Receiver of Etawa Co-operative Mill is excluded from this order as mentioned in the Judges Order made out by the applicant himself.

10. A sum of Rs.3,91,35,429/- is lying to the credit of this Suit in the Court Receiver's account. The Advocate for the applicant states that the amount of the sale which is required to be deposited in the Court as per this order shall

take into account this amount and the total amount to be deposited shall be the amount in the suit less the amount lying to the credit of the Court Receiver of this Court. Pending the sale proceedings the Court Receiver shall deposit to the credit of this Suit, the amount now lying with him after deducting his costs. The amount so deposited shall be invested in a Fixed Deposit of a Nationalised Bank initially for a period of 37 months.

11. This order is stayed for 3 weeks.

(SMT.ROSHAN DALVI, J.)